

**FILED**

**FEB 16 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

GREGORIO VARGAS-PEREZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-73076

Agency No. A31-073-443

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Gregorio Vargas-Perez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") order denying his application for cancellation of removal. To the

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review for substantial evidence. *See Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the IJ's determination that Vargas-Perez failed to prove the requisite seven years of continuous physical residence in the United States to qualify for cancellation of removal. *See* 8 U.S.C. § 1229b(a)(2); 8 U.S.C. § 1101(a)(33) ("The term 'residence' means place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."); *Alcarez-Garcia v. Ashcroft*, 293 F.3d 1155, 1157-58 (9th Cir. 2002) (noting that "residence" for immigration purposes is where petitioner "was physically present").

Vargas-Perez contends the IJ violated his due process rights by considering only the residence issue, and not the equities. Because the residence issue was dispositive of Vargas-Perez's eligibility for cancellation, Vargas-Perez has not raised a colorable due process claim. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) ("To be colorable . . . the claim must have some possible

validity”); *Ortiz v. INS*, 179 F.3d 1148, 1153 (9th Cir. 1999) (“Due process challenges to deportation proceedings require a showing of prejudice to succeed.”).

**PETITION FOR REVIEW DENIED in part, and DISMISSED in part.**